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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

IN RE:

HERNAN MIRANDA and MARIA ALFARO-MIRANDA

NO. 17-20023-rlj7

Debtors.

AMARILLO MEDICAL SPECIALISTS, LLP

Plaintiff,

HERNAN MIRANDA and
MARIA ALFARO MIRANDA

Adversary NO. 02003-rlj

Defendants.

FIRST AMENDED COMPLAINT
TERMINATION OF DISCHARGEABILITY

TO THE HONORABLE ROBERT L. JONES, U.S. BANKRUPTCY JUDGE:

Now COMES AMARILLO MEDICAL SPECIALISTS, LLP (“AMS”) and pursuant to Bankruptcy Rule 7015 and Federal Rule of Civil Procedure 15, files this First Amended Complaint for Determination of Dischargeability (the “**Complaint**”). In support of this Complaint, AMS will show the following:

I. PARTIES AND JURISDICTION

1. Hernan Miranda and Maria Alfaro-Miranda (“**Debtors**”) are individuals residing in Randall County, Texas.
2. AMS is limited liability partnership organized under the laws of the State of Texas, and it holds a claim against Debtors, as set forth below.
3. This court has jurisdiction over this Complaint pursuant to 28 U.S.C. §§ 1334 and 157, 11 U.S.C. §§ 727 and 523, and Rule 7001 *et seq.* of the FEDERAL RULES OF BANKRUPTCY PROCEDURE.
4. The Court’s consideration of this Complaint is a core proceeding as defined in 28 U.S.C. § 157(b)(I) and (J).

II. BACKGROUND

5. Debtors filed the above-styled bankruptcy case under Chapter 7 of 11 U.S.C on February 1, 2017 (the “**Petition Date**”). In their petition, Debtors have scheduled a \$100,000.00 contingent, unliquidated, disputed unsecured claim owing to AMS.

6. Debtor Hernan Miranda, M.D. (Dr. Miranda) is a former partner of AMS. He was expelled from AMS on March 18, 2016. Upon review of Dr. Miranda’s accounts after his expulsion, AMS discovered that Dr. Miranda had misused and converted tens of thousands of

dollars of funds rightfully belonging to AMS. Investigation into the full extent of the misappropriation of funds by Dr. Miranda is ongoing.

7. During Dr. Miranda's tenure with AMS, he conspired with his wife, Debtor Maria Alfaro-Miranda ("Mrs. Miranda"), to convert funds to their own personal account. Specifically, Debtors converted insurance proceeds, patient copays, and other funds received and belonging to the AMS and deposited these funds directly into their own account. Debtors continued to divert funds belonging to AMS into their own personal account after Dr. Miranda's expulsion from AMS.

8. Further, upon Dr. Miranda's expulsion from AMS, Dr. Miranda entered into a contract regarding the manner in which Dr. Miranda would have access to his patient records. Under the contract, the parties agreed that Dr. Miranda would pay AMS \$6,000.00 for its services and reimbursement of the Practice's costs associated with providing Dr. Miranda his patient records. Dr. Miranda has not paid—and never intended to pay—AMS for these services, which it was induced to provide based on Dr. Miranda's false representations that AMS would be compensated for its services.

9. Mrs. Miranda actively engaged in her husband's conversion and embezzlement and has received and continues to receive the benefit of their collective malfeasance.

III. COUNT I- 11 U.S.C. § 523(a)(6) WILLFUL OR MALICIOUS INJURY, CONVERSION

10. The allegations set forth in paragraphs 1–9 above are incorporated herein as if set forth at length. AMS claim against Debtors should be declared non-dischargeable pursuant to Section 523(a)(6) of the BANKRUPTCY CODE. 11 U.S.C. § 523(a)(6). Section 523(a)(6) provides as follows:

(a) A discharge . . . does not discharge an individual debtor from any debt— . . . (6) for willful and malicious injury by the debtor to another entity or to the property of another entity. . . .

11. The Debtors willfully and maliciously converted funds rightfully belonging to AMS when they diverted insurance proceeds, patient copays and other AMS funds to their personal account and for their own use.

12. Although the exact amount of the claim has not been determined, AMS asserts that its claim against the Debtors, in excess of \$100,000.00, should not be discharged pursuant to 11 U.S.C. §523(a)(6).

IV. COUNT II- 11 U.S.C. § 523(a)(2)(A)- FALSE PRETENSES

13. The allegations set forth in paragraphs 1-12 above are incorporated herein as if set forth at length. In addition, WTNB submits Debtors' debt to WTNB should be declared non-dischargeable pursuant to Section 523(a)(2)(A) of the BANKRUPTCY CODE. 11 U.S.C. § 523(a)(2)(A). Section 523(a)(2)(A) provides as follows:

(a) A discharge . . . does not discharge an individual debtor from any debt— . . . (2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by— (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition.

14. Dr. Miranda obtained services from AMS based on false pretenses, false representations, or actual fraud in that Dr. Miranda represented to AMS that it would be paid for its services while knowing that he never intended to do so. That Dr. Miranda never intended to compensate AMS for its services is evidenced by his embezzlement of funds rightfully belonging to AMS.

15. By his representations, Dr. Miranda intended to deceive AMS and induce AMS to provide services to him. AMS justifiably relied on the representation that Dr. Miranda would

compensate AMS for its services by providing those services.

16. AMS was damaged by Dr. Miranda's false pretense, a false representation, or actual fraud in the amount of \$6,000 which represents the value of the services that Dr. Miranda induced AMS to provide based on his false representations. Accordingly, up to \$6,000.00 should be excepted from any discharge of AMS' claim against Debtors pursuant to the provisions of Section 523(a)(2)(A) of the BANKRUPTCY CODE.

V. COUNT II- 11 U.S.C. § 523(a)(4)- FRAUD & EMBEZZLEMENT

17. The allegations set forth in paragraphs 1-16 above are incorporated herein as if set forth at length. In addition to the forgoing Counts, Debtors' indebtedness to AMS should be declared non-dischargeable pursuant to Section 523(a)(4) of the BANKRUPTCY CODE. 11 U.S.C. § 523(a)(4). Section 523(a)(4) provides as follows:

(a) A discharge...does not discharge an individual debtor from any debt---(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.

18. As set forth above, Dr. Miranda is a former partner of AMS. As such, he was a fiduciary of AMS and owed his partners fiduciary duties. In flagrant disregard for those duties, Dr. Miranda abused his position of trust to embezzle and defraud AMS out of insurance proceeds, patient copays, and other funds—in an amount of at least \$100,000.00—rightfully belonging to AMS. Accordingly, AMS' claim against Debtors should be excepted from any discharge pursuant to the provisions of Section 523(a)(4) of the BANKRUPTCY CODE.

WHEREFORE, Amarillo Medical Specialists, LLP respectfully requests that after final hearing:

- i. this Court except from any discharge granted herein AMS's claims against Debtors for the reasons listed above;
- ii. that AMS be awarded judgment for reasonable attorney's fees and other expenses, including all costs of court; and
- iii. that AMS be awarded judgment for such other and further relief to which it may be entitled;

Date: March 22, 2017
Amarillo, Texas

Respectfully submitted,

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By: /s/ Shawn D. Twing
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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of March, 2017 a true and correct copy of the foregoing document has been served on all appropriate parties by ECF and upon counsel of record for debtors and upon debtors by email and/or regular U.S. Mail at the addresses listed below:

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